IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 5 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANEKLAL HARILAL SPG & MFG CO.LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR HM TALATI for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 30/08/2000

ORAL JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.

1. At the instance of the assessee, the following questions of law have been referred to this Court:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that payment for bank guarantee commission was an expenditure of capital nature?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that expenditure in connection with issue of bonus shares was expenditure of capital nature and not deductible in computation of total income?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that commission paid to managing directors was remuneration and requires to be added under the provisions of sec. 40(c) of the I.T.Act, 1961?"

2. Learned counsel appearing for the assess and the Department do not dispute that question no. 1 is concluded against the Revenue by the decision of Supreme Court in Additional Commissioner of Income-Tax v. Akkamamba Textiles Ltd. (1997) 227 ITR 464. Similarly, question no. 2 is covered by the decision of the Supreme Court in Brooke Bond India Ltd. vs. CIT (1997) 225 ITR 798 against the assessee.

3. It is also not disputed that question no. 3 is also concluded against the assessee by Division Bench decision of this Court in Ambica Mills Ltd. Vs. CIT (1999) 235 ITR 264 in which reliance has been placed on Additional Commissioner of Income-Tax (Guj.) vs. Tarun Commercial Mills Ltd. 113 ITR 745.

4. The reference, therefore, is answered on question no. 1 against the revenue and on questions nos. 2 and 3 against the assessee.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

[sndevu]